



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-832

CERTAIN CERTAIN INK APPLICATION DEVICES AND COMPONENTS THEREOF AND METHODS OF USING THE SAME

COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION FINDING RESPONDENT T-TECH TATTOO DEVICE INC. IN DEFAULT; REQUEST FOR SUBMISSIONS ON REMEDY, PUBLIC INTEREST, AND BONDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 5) finding respondent T-Tech Tattoo Device Inc. of Ontario, Canada ("T-Tech") in default.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on

March 6, 2012, based on a complaint filed by MT.Derm GmbH of Berlin, Germany and Nouveau Cosmetique USA Inc. of Orlando, Florida (collectively “Complainants”) alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), as amended, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink application devices and components thereof and methods of using the same by reason of infringement of certain claims of U.S. Patent Nos. 6,345,553 and 6,505,530. *77 Fed. Reg.* 13351 (Mar. 6, 2012). The Commission’s Notice of Investigation (“NOI”) named T-Tech, Yiwu Beyond Tattoo Equipments Co., Ltd. of Yiwu City, China (“Yiwu”); and Guangzhou Pengcheng Cosmetology Firm of Guangzhou, China (“Guangzhou”) as respondents. The Complaint was served on March 1, 2012. The Office of Unfair Import Investigations was named as a party. On June 29, 2012, the Commission determined not to review the portion of an ID (Order No. 7) finding Yiwu and Guangzhou Pengcheng in default pursuant to section 210.16 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.16). Notice (June 29, 2012).

On March 20, 2013, Complainants filed a motion for summary determination of violation of section 337 against T-Tech. On March 28, 2013, T-Tech filed an opposition to the motion, but did not dispute any of the facts in Complainants’ Statement of Undisputed Material Facts. On April 1, 2013, the Commission investigative attorney (“IA”) filed a response supporting the motion in part.

On April 17, 2013, Complainants also filed a motion for an ID finding T-Tech in default pursuant to Commission Rule 210.17(e). On April 19, 2013, the ALJ issued Order No. 32, ordering T-Tech to show cause as to why it should not be found in default for failing to comply with deadlines set forth in the procedural schedule. On April 25, 2013, T-Tech filed an opposition to the motion. On April 29, 2013, the IA filed a response in support of the motion.

On July 17, 2013, the ALJ issued the subject ID (Order No. 35), granting-in-part Complainants' motion for summary determination of violation against T-Tech or, in the alternative, granting Complainants' motion for an ID finding T-Tech in default pursuant to section 210.17 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.17). No party petitioned for review of the subject ID.

The Commission has determined not to review the portion of the subject ID finding T-Tech in default pursuant to Commission Rule 210.17. Complainants are not seeking a general exclusion order under section 337(d)(2) (19 U.S.C. § 1337(d)(2)) or section 337(g)(2) (19 U.S.C. § 1337(g)(2)). The Commission, therefore, finds the portion of the ID granting summary determination of violation of section 337 moot.

T-Tech is the last remaining respondent in this investigation, the other respondents, Yiwu and Guanzhou Pengcheng having previously been found in default. With respect to T-Tech, section 210.17 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.17) states that a failure to participate in an investigation may provide a basis for a finding of violation of section 337 under section 337(d)(1) (19 U.S.C. § 1337(d)(1)). With respect to Yiwu and Guanzhou Pengcheng, section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and section 210.16(c) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.16(c)) authorize the Commission to issue relief against a respondent found in default.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address

the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Commission Opinion at 7-10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the IA are also requested to submit

proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on August 30, 2013. Reply submissions must be filed no later than the close of business on September 6, 2013. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-832") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46 and 210.50).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

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